

1506315 (Migration) [2016] AATA 3083 (14 January 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Mrs Marcia Iolanda De Lima Baptista Mr Ivan Carlos Baptista Penedo Ms Beatriz Mara Batista Lourenco
CASE NUMBER:	1506315
DIBP REFERENCE(S):	CLF2013/69953
MEMBER:	Rania Skaros
DATE:	14 January 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicants Partner (Residence) (Class BS) visas.

Statement made on 14 January 2016 at 10:12am

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 16 April 2015 to refuse to grant the applicants Partner (Residence) (Class BS) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named applicant (the applicant) applied for the visa on 26 March 2013 on the basis of her relationship with her sponsor. At that time, Class BS contained only one subclass: Subclass 801 (Partner). The criteria for the grant of this visa are set out in Part 801 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl.801.226 as the delegate was not satisfied that the applicant met PIC 4020. The secondary applicants were refused on the basis of not satisfying cl.801.224 and cl.801.321.
4. When applying for review the applicant provided a copy of the decision record to the Tribunal.
5. The applicant appeared before the Tribunal on 24 August 2015 by telephone from Portugal to give evidence and present arguments. The second named applicant appeared before the Tribunal in person. The Tribunal hearing was conducted with the assistance of an interpreter in the Portuguese and English languages.
6. It was indicated on the response to hearing form that the sponsor, Mr Inocencio, would provide evidence at the hearing. The applicant told the Tribunal that Mr Inocencio had travelled to the Philippines three months ago for work but could provide evidence by telephone. The Tribunal attempted to contact Mr Inocencio on the number provided, which was an Australian mobile number, but the number failed to connect.
7. The applicants were represented in relation to the review by their registered migration agent.
8. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

9. The issue before the Tribunal turned on whether the applicant meets the requirements of cl.801.221(2)(c).
10. *Background information*
11. Ms Baptista is a citizen of Portugal. She has two children, aged 10 and 16, from previous relationships. Mr Inocencio is an Australian citizen. He has three children from previous relationships. The parties claim to have met in 1996 in Portugal. They claim to have committed to a shared life together to the exclusion of all others in August 2012. They married at Hornsby NSW on 20 February 2013.
12. The applicants applied for Temporary Partner visas (Subclass 820) on 26 March 2013, which were granted on 16 July 2014.

13. The Department received information indicating that the parties are in a contrived relationship and do not live together. The information also stated that Ms Baptista paid Mr Inocencio a sum of money to sponsor her.
14. A home visit was conducted by Departmental officers on 13 January 2015 at the parties' nominated address in Pile St Marrickville. The officers indicated that Mr Inocencio, who arrived at the premises while site visit was being conducted, demonstrated unfamiliarity with the residence. He could not recall the parties' anniversary and appeared uncertain and unable to provide information. When asked about where his shoes were kept, Mr Inocencio unsuccessfully tried to find them in the hallway closet and later found a pair in the laundry which he said were his, however, a young person at the premises indicated the shoes belonged to him. He identified some clothes at the premises as being his but officers noted that the clothes were a few sizes too small. Mr Inocencio was unable to show the officers where his underwear was kept. Mr Inocencio denied that the relationship was contrived. The delegate, in relying on the information obtained during the site visit, concluded that the home visit supported the adverse information received by the Department that the parties were not living together as a couple and that application was made for immigration purposes. The delegate found that the applicant had provided false and misleading information in relation to her partner visa application.
15. Following the home visit the applicant provided a number of documents to the Department, including, photographs of the parties together, information regarding Ms Baptista's employment, a residential tenancy agreement for the premises in Pile St Marrickville dated 15 June 2013, an electricity bill in Mr Inocencio's name for an address in Terrace Rd Dulwich Hill, dated January 2013, a certificate of balance issued for a Commonwealth bank account held in joint names indicating a credit balance of \$50 as at 5 May 2014, a signed letter from Carlos Sousa dated 14 May 2014 indicating he has known the parties for over a year and that they are good friends of his and they socialise together, residential tenancy agreement in joint names dated 28 January 2015 for a unit at South Hurstville, a 888 Form in support of the relationship dated 20 March 2015 and a declaration from Mr Inocencio dated 14 April 2015.

16. *Hearing evidence*

17. At the hearing the Tribunal expressed its concern to Ms Baptista that Mr Inocencio could not be contacted. Ms Baptista stated that the telephone lines in the Philippines were bad. She told the Tribunal that she and Mr Inocencio were in Portugal together for two weeks and that Mr Inocencio then went to the Philippines for work. When asked about when she and Mr Inocencio departed Australia, initially she said one week before her, she then said maybe it was not sure and that maybe it was two or three weeks. When asked why she could not recall when Mr Inocencio departed given her claim they were living together in Hurstville at the time, she said that she was in a difficult situation, things were bad, she is stuck in Portugal and is unable to return to Australia, her parents have had to travel to Australia to look after the children. The Tribunal noted that while her circumstances may be difficult they not explain why she could not recall when Mr Inocencio departed Australia, she said she cannot understand herself.
18. Ms Baptista told the Tribunal that she and Mr Inocencio had known each other for a long time in Portugal and communicated regularly through the internet using Skype. They started communicating in 2010 or 2011. She came to Australia in 2012 to meet up with him. She was going through difficult times and he was a big help to her. He assisted her during the separation with Paulo Lourenco, her daughter's biological father. She separated from Mr Lourenco the first time in 2003 and the Court gave them shared custody. They decided to try to be in a relationship again for the sake of her daughter but things did not work out and they separated again in about 2008 or 2009.

19. When asked about Mr Inocencio's family, Ms Baptista told the Tribunal that he has a son in Portugal, whom she knows and has met, a son in France and has a daughter named Jess in Australia. When asked about Mr Inocencio's previous relationships, she stated that she knows he was previously married to Jess' mother, she knows he has been married at least twice before but does not know the details. When asked about his most recent marriage, she stated it was to Jess' mother. When asked if she knew her name, she stated she does not know the name but she knows the woman. When asked when they separated, she stated she is not sure but thinks it was more than two years before their relationship. He had also told her that he had a relationship with a Brazilian woman. When asked if he was in a relationship at the time they were regularly communicating, she stated as far as she knows he did not have a relationship with anyone else at the same time.
20. When asked about their wedding, she stated that they married on about 20 or 21 of February. She does not recall what day of the week it was. She, her children and the witnesses attended the wedding. They had a small party afterwards, she cannot recall where it was because it had a strange name and was far from Sydney. A few of Mr Inocencio's friends attended but she does not know them well. They took photos of the party.
21. When asked if she had lived with Mr Mr Inocencio, she stated yes, they first moved in together at Dulwich Hill when she came to Australia in January 2013. He picked her and the children up from the airport and they started living at that address together.
22. When asked if they had been on any holidays together after the marriage she said no because they did not have sufficient funds. When asked about Mr Inocencio employment she said he has always been a driver in Australia. He drove buses, had his own taxi, had his own limousine at one time and also drove for a company. She said that he had also told her that he worked in the Philippines.
23. When asked about his travels since their marriage, she was unable to recall. When asked if he had travelled overseas after their marriage she said yes but could not recall when because it is too early in Portugal and she is tired. The Tribunal noted that it was difficult to accept her explanation for why she cannot recall how long after their marriage Mr Inocencio travelled overseas and that this may cast doubt on her claim that they were living together at the time. She stated that maybe it was one or two months after the wedding. She then stated that she needed a signature for the kids school and could not reach him and so she believes that maybe it was one or two weeks after the wedding. When asked how long he was away for during that trip she said she could not recall because he travels to the Philippines all the time and it is not important for her. When asked how many times he travelled to the Philippines in their first year of marriage, she stated maybe three times. She said that in 2014 he had travelled often but she is not sure if he had travelled overseas or just within Australia. The Tribunal again raised its concern that her lack of knowledge about Mr Inocencio's travels, and her not knowing whether he was travelling overseas within Australia which it noted may cast doubt about the relationship, she said she knows when he is gone but the details were not important for her.
24. Ms Baptista gave evidence that they remained at the Dulwich Hill address for about 7 months and moved to Pile Street Marrickville in July 2013. She said that only she, Mr Inocencio and the children lived at that address. When asked if anyone else had resided at that address, she said that the stepsister of her daughter Beatriz had stayed with them for about 3 months. She explained that the stepsister is also Mr Lourenco's biological daughter. When asked why Mr Lourenco's daughter would stay with them and not with her father Mr Lourenco, she stated because she wanted to visit Beatriz and that Mr Lourenco was living in a one bedroom apartment and the stepsister had always lived with her mother.

25. When asked if Mr Lourenco had ever lived with her and the children at the Marrickville address she stated that he would come over often because they had a child together. She said Mr Lourenco knew Mr Inocencio and that they used to speak together. Mr Lourenco often visited their home to have dinner with them. They moved from Marrickville to South Hurstville address in February 2015.
26. The Tribunal noted that there was limited information regarding the financial aspects of their relationship. She stated that they have a joint account. The Tribunal noted that the statements of that account showed very limited transactions, she said because she was paid in cash and Mr Inocencio had his own business account. She said that she had a problem with Mr Inocencio because he had lied to her about his financial situation with work and she found out that he had asked for money from Centrelink.
27. The Tribunal then took evidence from the secondary applicant Ivan Baptista Penedo. He said that his stepdad (Mr Inocencio) works hard for them and although he was not home sometimes he always supported them. He said that Mr Inocencio works a lot and often stays at his office. He said that he works as a driver. When asked if Mr Inocencio had lived with them at South Hurstville, he said he stayed there most days of the week but it was not regular because he worked at night and sometimes stayed at his home. When asked to clarify, he said at the office. When asked about who had resided at the Marrickville address, he said his mother (Ms Baptista), his sister Beatriz and Mr Inocencio. When asked if anyone else had ever lived there with them, he said no. When asked if Mr Inocencio spent the night at the Marrickville address, he said it was not regular and he stayed at the office. When asked how often he slept at the Marrickville address, he said not 7 days but at least 4 days though sometimes 2 days.
28. When asked if he knew Mr Lourenco, he stated yes. When asked how often he sees Mr Lourenco, he said mostly on weekends because he takes care of Beatriz. When asked if Mr Lourenco had ever slept at the Marrickville address he stated he was not sure. When asked about the residential address of Mr Lourenco he said he did not know it is he has never been to his house but thinks he lives nearby. He said Mr Lourenco takes Beatriz to school.
29. The Tribunal explained to Ms Baptista that it had some concerns which it wanted to discuss with her. It explained that a number of allegations were received by the Department indicating that she and Mr Inocencio are in a contrived relationship and they have not lived together. That she paid the sponsor for the purpose of the partner visa application, including through a bank funds transfer. That she and the sponsor lived at separate addresses. That she resided at Pile St Marrickville and the sponsor was living in Bankstown. That she lived with her Portuguese partner, Paulo Lourenco, who was in Australia on a student visa and that Paulo's mail goes to an address at New Canterbury Road Petersham. The Tribunal noted that Departmental movement records confirmed that Paulo Lourenco was in Australia as the holder of student visas from March 2012 until he departed in February 2015. The Tribunal explained that the information was relevant because it might cast doubt on her claim that she is in a genuine and exclusive relationship with Mr Inocencio.
30. Ms Baptista said that she is not sure where the accusations came from but thinks it was a person that is disliked within the Portuguese community. She said how could she be living with her daughter's father in Australia when he had taken her to court in Portugal. She said Mr Lourenco signed a letter allowing Beatriz to live with her and Mr Inocencio. She said she knows Mr Inocencio owed money to a person and that person said if he did not pay they would make a complaint to immigration.
31. The Tribunal then put to Ms Baptista that Departmental movement records for Mr Inocencio indicated that he departed Australia on 13 March 2013 for 2 weeks. Information before the Tribunal indicates that he went to the Philippines via Malaysia. On arrival in Australia he

noted his address as Warden Road Earlwood. He provided the details for his daughter Jessica as his emergency contact. It noted that immigration records also indicate that he travelled again to the Philippines in May 2014 for 3 weeks and the address noted on arrival then was Petersham and his daughter was again noted as the emergency contact. Ms Baptista stated that the issue about the address is new for her but the other allegations were matters that this person, with whom Mr Inocencio had a dispute, knew. She stated that Mr Inocencio and this person went to court immediately before the immigration visit. When asked about the nature of that dispute, she said that it was about money and also the man accused Mr Inocencio of assault. She does not know the man personally. She said that Mr Inocencio was charged, one charge was dismissed and was found guilty of the other and given a suspended sentence.

32. The Tribunal put to Ms Baptista that there was other information before the Department, including a declaration made by Mr Inocencio which was submitted to the Department with another partner visa application, dated 31 January 2014, which noted Mr Inocencio's address as being at New Canterbury Road Petersham. The Tribunal pointed out to Ms Baptista that this was the same address indicated on documents for Mr Paulo Lourenco. Ms Baptista said she does not know, she thought it was very strange and said that maybe Paulo and Mr Inocencio had lived together. She said she is confused and does not know and things may have been hidden from her. The Tribunal explained to Ms Baptista that the information before it casts serious doubt on her claim to be in a genuine and exclusive relationship with Mr Inocencio. She said that she did not know about him being a witness in another application. She said Mr Inocencio did not tell her but she does not understand why this has anything to do with her relationship or her application. The Tribunal explained that it was relevant because it had to consider with us she and Mr Inocencio were in a genuine and continuing relationship. It explained that the fact that she does not know about the matters raised with her indicates that she is not in a committed relationship with Mr Inocencio. The Tribunal also noted that the fact that Mr Inocencio noted his daughter as his emergency contact cast doubt on whether they are in a committed relationship and indicated different residential addresses cast doubt on whether they were living together and do were in a genuine relationship as claimed. Ms Baptista said that she knows about the addresses he gives because he has 3 different addresses and does not provide consistent information. She said he has a post-box and many times he gives the address of his office. She said she does not know why he would give his daughter's contact details for emergencies as she is 18 years of age and is disabled. She said the address on his driver's license is the one that they live in and she had been asking him to change it. She said that the address he gave immigration might be his office address and that it was normal to do this and that they did not think about the address. When asked if she could provide the address of the office she said he has an office in Petersham which was the same as the address on his driver's license. When asked what was the address on his driver's license she said she was not sure but believes it may be Wardell, she was not sure of the spelling but thought it may start with W. She said that it was in Petersham but then he changed his office to something closer to home. When asked about the address of the office that was closer to home she said she cannot remember the address but knows how to drive there.
33. The Tribunal discussed with the applicant the Departmental officers' observations after the site visit as detailed on the decision record. Ms Baptista said that when immigration arrived they rang her at work and asked her if she could go to the house but she could not because she was alone at work. She told them to wait for Mr Inocencio as he was on his way to the house. She said that Mr Inocencio invited the officers to come into the house. She indicated that Beatriz and Paulo were in the house when officers arrived but that Paulo left after Ivan arrived. She said the clothes looked too small because Mr Inocencio had put on weight although one of the shirts did fit him. She said that Mr Inocencio did not know the whereabouts of his underwear because she changes the place where they are kept quite often. She said it was impossible that he did not know the house well because he had been

there and there are photos of him there at Beatriz's birthday party. The Tribunal said that while the photos might indicate that he had been to the premises its concern was whether he was residing with her as claimed. Ms Baptista said that during the visit Mr Inocencio sat around a table with the Departmental officers, they noticed that he was nervous and upset and the officers told him not to worry and to calm down as they had received information against him and Mr Inocencio had told them that he knows who made the allegations and that he has a court case tomorrow. She said he said he was stressed about the court case. In relation to the Department's conclusion that the shoes found at the property were her son's shoes, she said it is not true as they are Mr Inocencio's shoes. She said that Mr Inocencio told the officers that they could speak to her as she only worked 10 minutes away but they said it was not necessary. She said if the relationship was not genuine then they would not have agreed for the officers to conduct their visit.

34. s.359A letter – invitation to comment on adverse information

35. On 7 September 2015 the Tribunal wrote to the applicant in accordance with section 359A of the Act inviting her to comment on or respond to information which it considered would comment subject to her comments or response, be the reason or part of the reason for affirming the decision under review. The information related to allegations received regarding the relationship being contrived, that she was residing with Mr Paulo Lourenco, movement records for Mr Inocencio, herself and Mr Lourenco. The information also related to inconsistent evidence provided by her and her son at the hearing about who lived at the address in Marrickville. The information also related to documents before the Department, including the statutory declaration made by Mr Inocencio that was provided in support of another partner visa application, and outgoing and incoming passenger records for Mr Inocencio.
36. On 21 September 2015 the Tribunal received an email from the applicant's representative requesting an extension of time to provide comments. The representative noted that the Tribunal's letter had been forwarded to the applicant but that to date no response had been received. The Tribunal agreed to grant the extension of time, however to date no response has been received from the applicant or the representative. In the circumstances the Tribunal has decided to proceed to a decision on the information before it.

WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP

37. Relevantly to this matter, cl.801.221(2)(c) requires that at the time of this decision, the applicant is the spouse of the 'sponsoring partner', who must be an Australian citizen or Australian permanent resident or an eligible New Zealand citizen who was specified in the related Subclass 820 visa application as the spouse or de facto partner of the applicant. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen and was identified in the Subclass 820 visa application. On the evidence before it, the Tribunal is satisfied that the sponsor is the 'sponsoring partner' of the applicant.
38. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as husband and wife to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a) - (d). In forming an opinion as to these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

ARE THE PARTIES VALIDLY MARRIED?

39. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The marriage certificate provided with the application indicates the parties married in Hornsby NSW on 20 February 2013. There is nothing before the Tribunal to suggest that the marriage is not valid. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

ARE THE OTHER REQUIREMENTS FOR A SPOUSAL RELATIONSHIP MET?

40. Financial aspects of the relationship

41. The Tribunal has considered the financial aspects of the relationship and notes that there is no evidence before it to indicate that the parties have any joint ownership of assets or liabilities.
42. Information before the Tribunal indicates that Ms Baptista and Mr Inocencio have a joint bank account. However, the joint account shows limited transactions and does not demonstrate the parties' pooling of resources or sharing of day to day expenses. When this concern was discussed with the applicant at the hearing, she stated that she gets paid in cash and that Mr Inocencio had his own business account. She also stated that Mr Inocencio had lied to her about his financial problems and she found out that he was in receipt of Centrelink benefits. The Tribunal notes that no evidence of Mr Inocencio's business accounts or Centrelink payments were provided to the Tribunal. Furthermore, Mr Inocencio did not attend the hearing or make himself available by telephone and did not provide an explanation as to why he could not attend. In the circumstances, the Tribunal was unable to obtain evidence from him about the financial aspects of the parties' relationship or to seek clarification regarding evidence relating to his financial difficulties as claimed by Ms Baptista.
43. The Tribunal considers that as the parties reside in the same country and claim to be living at the same address, more evidence would be available regarding the financial aspects of the relationship. However, limited evidence was provided to the Tribunal to demonstrate the parties' pooling of financial resources and sharing of day-to-day household expenses and the Tribunal did not find Ms Baptista's explanation for the limited evidence to be convincing. In the circumstances, the Tribunal is not satisfied that the financial aspect of the parties' relationship demonstrates that they are in a genuine and continuing relationship with one another.

44. Nature of the household

45. The Tribunal has also considered the nature of the parties' household. Ms Baptista claims that she and Mr Inocencio resided together with her children at Dulwich Hill from January 2013 until July 2013 when they moved to Pile St Marrickville. Ms Baptista claims that she, the children and Mr Inocencio then moved to South Hurstville in February 2015. A number of documents were provided in support of the parties residing at the same addresses, including, joint lease agreement for the South Hurstville premises, lease agreement in Mr Inocencio name for the Marrickville residence and various bills and documents in each of the parties' names suggesting they resided at the same address. The Tribunal has considered these documents, however, for the reasons that follow, it is not satisfied that the parties lived together as claimed.
46. Firstly, the Tribunal received detailed allegations indicating that the parties lived at separate addresses and that Ms Baptista had paid Mr Inocencio for the purposes of the partner visa application. The allegations indicated that Ms Baptista lived with your Portuguese partner,

Paulo, who was in Australia on a Student visa and that Mr Inocencio resided at Meredith Street Bankstown. The allegations indicated that Paulo's mail goes to another address at New Canterbury Road Petersham, and that Ms Baptista and the children resided with Paulo Lourenco since arriving in Australia and until Paulo left in February 2015. Departmental movement records for Paulo Sergio Martins Lourenco confirmed that he was in Australia as the holder of Student visas from March 2012 to February 2015.

47. At the hearing Ms Baptista stated that she could not have been living with Mr Lourenco in Australia as he had taken her to court in Portugal and that Mr Lourenco had signed a letter allowing their daughter Beatriz to reside with her and Mr Inocencio in Australia. She also suggested that the accusations came from a person that had a dispute with Mr Inocencio over money. The adverse information was also detailed in the s.359A letter, however, as indicted above, the applicant did not comment on the allegations. The Tribunal is not satisfied that Mr Lourenco's letter allowing Beatriz to reside in Australia or taking Ms Baptista to court overcomes the concerns raised in the detailed allegation that Ms Baptista resided with Mr Lourenco, who is the biological father of her daughter Beatriz. The Tribunal acknowledges that allegations in partner cases may sometimes be unsubstantiated and made due to personal disputes between individuals, however in this case, the combination of all of the other evidence before the Tribunal suggests that the allegations are material and in some aspects can be substantiated.
48. Secondly, when Departmental officers conducted a site visit at the Marrickville address they noted that Mr Lourenco was at the premises when they arrived but left shortly after. The officers observed that Mr Inocencio, who arrived some time later after being contacted by Ms Baptista, demonstrated unfamiliarity with the residence and was unable to locate personal belongings, such as his underwear. The Tribunal has considered the applicant's explanations in relation to concerns of the site visit, including her evidence that one of the shirts did fit Mr Inocencio and that Mr Inocencio had gained weight and that is why the clothes at the premises did not fit him, that the shoes Mr Inocencio found were his and not her son's, and that he could not locate his underwear because she changes the location often. The Tribunal has also considered her explanation that Mr Inocencio was stressed because he had a court case the next day and that they would not have agreed for the officers to come into the home to conduct the site visit if they were not in a genuine relationship. The Tribunal also acknowledges, as noted by Ms Baptista at the hearing, that photographs were provided to the Department showing Mr Inocencio at the Marrickville premises. However, as discussed with the applicant at the hearing, while it is prepared to accept that Mr Inocencio has been to the Marrickville address and may even be familiar with the layout of the premises, it has serious concerns about whether Mr Inocencio actually resided at the address as claimed. The Tribunal does not accept that the stress experienced by Mr Inocencio explains why he could not locate his personal items and nor does it accept as plausible that he could not find his underwear because the applicant often changes the location. Also, even if Mr Inocencio had gained weight, the Tribunal also finds it unusual that of all the male clothes at the premises only one shirt fit him. Ms Baptista's explanation regarding the shoes that were located at the property was inconsistent with the Department's records indicating that a young male at the premises, whom the applicant noted was her son Ivan, had indicated the shoes were his and not Mr Inocencio's. Given the concerns raised elsewhere in this decision about Ms Baptista's evidence, the Tribunal prefers the evidence recorded by the Departmental officers. Also, the Tribunal does not accept that if the relationship was not genuine Mr Inocencio would not have proceeded with the site visit because the applicant and Mr Inocencio would have known that if they did not participate in the site visit it would have adversely affected the outcome of Ms Baptista's visa application and that it was in their best interest to agree to the site visit. The Tribunal gives weight to the information recorded on the Department's file regarding the site visit and considers that the evidenced, in combination with other evidence before the Tribunal, indicates that Mr Inocencio's did not reside at the Marrickville address with the Ms Baptista. The Tribunal

further notes that the presence of Mr Lourenco at the premises on arrival of the Departmental officers also gives weight to the allegation that Ms Baptista lived with Mr Lourenco notwithstanding Ms Baptista's evidence that Mr Lourenco was often at the property because they had a child together.

49. Thirdly, Ms Baptista's and her son Ivan provided inconsistent information about who resided at the Marrickville address. Ivan told the Tribunal that he is not sure if Paulo had ever slept at the Marrickville address but could not tell the Tribunal where Paulo lived. Ms Baptista would not answer the Tribunal's question about whether Mr Lourenco slept at the Marrickville address stating only that he came over often because they had a child together. Ivan stated that no one other than the parties, himself and Beatriz ever resided at the Marrickville address. Ms Baptista however that stated that Mr Lourenco's daughter had stayed with them for three months. The Tribunal was concerned that Mr Lourenco's daughter would stay with Ms Baptista and her family and not Mr Lourenco during her three months visit. The Tribunal considered Ms Baptista's explanation that Mr Lourenco's daughter wanted to stay with Beatriz, who is her step-sister, that Mr Lourenco was living in a one-bedroom flat and that Mr Lourenco's daughter is used to living with her mother and not Mr Lourenco. However, the Tribunal was not persuaded by Ms Baptista's explanation and formed the view that the inconsistency in the evidence between Mr Baptista and Ivan arose because they were not telling the truth about who actually resided at the Marrickville address. These concerns give further weight to the allegations that Mr Lourenco resided at the Marrickville premises with Ms Baptista and the children. The Tribunal notes that these issues were also particularised in the Tribunal's s.359A letter, however, no response was received from Ms Baptista on that issue.
50. Fourthly, information provided by Mr Inocencio on the incoming passenger cards for trips he undertook in March 2013 and June 2014 indicated that his residence in Australia at Warden St Earlwood and Petersham respectively. This information is not consistent with Ms Baptista's claim that the parties resided together at Dulwich Hill until July 2013 and at Marrickville from July 2013 until February 2015. The Tribunal further notes that information on the passenger card noted Mr Inocencio's daughter Jessica as the emergency contact. When the information was discussed with Ms Baptista at the hearing she failed to provide any explanation stating that the issue relating to the address was new to her and she was also unable to explain why Mr Inocencio would indicate his daughter who is 18 years of age and has a disability.
51. Fifthly, information before the Department indicates that Mr Inocencio provided a declaration in support of a partner visa application dated 31 January 2014. On that declaration Mr Inocencio noted an address at New Canterbury Road Petersham. Interestingly, that is the same address indicated on the documents from Mr Lourenco that were provided to the Department in relation to Beatriz. When this information was put to Ms Baptista at the hearing she indicated she was very confused. Her responses included that it was strange, that maybe Mr Inocencio and Mr Lourenco had lived together, that things were hidden from her and that she was not aware Mr Inocencio was a witness in relation to a partner visa application. None of Ms Baptista's responses provide a satisfactory explanation as to why Mr Inocencio had provided different addresses than the ones the parties claimed to have lived in together.
52. When the Tribunal indicated that her responses regarding Mr Inocencio's addresses cast doubt on whether she and Ms Inocencio lived together as claimed, Ms Baptista then stated that she knows about the addresses because Mr Inocencio had three different addresses, including a post box and his office address. She then stated that Mr Inocencio provided to the Department his office addresses but when asked to give details about his office addresses she said he had moved offices but was not able to provide the address of his old or new office address. Ms Baptista's evidence in relation to the addresses used by Mr

Inocencio was evasive and incoherent and the Tribunal formed the view that she was making up her evidence in response to the Tribunal's queries.

53. The Tribunal did not consider Ms Baptista to be a reliable witness and having had regard to the evidence before it, as considered above, it does accept that Ms Baptista and Mr Inocencio formed a joint household.

54. Social aspects of the relationship

55. The Tribunal has also considered the social aspects of the relationship. The parties married on 20 February 2013 in the presence of Ms Baptista's children and two witnesses. Ms Baptista indicated that the witnesses in attendance were Mr Inocencio's friends but she could not recall their names. The Tribunal has also had regard to the statements provided in support of the relationship and to the photographs of the parties together with Ms Baptista's children and with a few friends. While evidence indicates the parties may be socially recognised by a few people as being married and that they have undertaken some social activities together, the Tribunal suspects, given the serious concerns discussed elsewhere in this decision, that these documents were manufacture for the purpose of the application.

56. Nature of the parties' commitment

57. The Tribunal has also considered the nature of the parties' commitment to each other. Ms Baptista claims to have known Mr Inocencio for a long time in Portugal, to have started communicating with him via Skype in 2010 or 2011 and to have met up in Australia in 2012. She could not recall if they married on 20 or 21 of February and did not know what day of the week they married. She said that she could not recall the name of the venue or location because it had a strange name. Mr Inocencio could not recall the date of their anniversary when asked by Departmental officers at the site visit. The Tribunal does not accept that Mr Inocencio's stress about the court case caused him to forget his anniversary date. The Tribunal considers that the reason Ms Baptista and Mr Inocencio could not recall the date of their wedding, and Ms Baptista's failure to recall details of the ceremony, is because such details were of no significance to them as they were not in a committed relationship with one another.
58. Of significant concern to the Tribunal is Mr Inocencio's non-attendance at the hearing and lack of explanation as to why he was not contactable. The Tribunal considered Ms Baptista's explanation that the telephone lines in the Philippines were not good, however, the Tribunal is of the view that if Mr Inocencio was committed to the relationship he would have made some attempt to contact the Tribunal, either by telephone or email, to explain why he could not be reached at the time of the hearing. His lack of engagement with the Tribunal's process casts serious doubt on his commitment to the relationship.
59. Ms Baptista's demonstrated a lack of knowledge about Mr Inocencio's travel history. Initially she could not recall that Mr Inocencio had travelled overseas three weeks after their marriage. The Tribunal does not accept Ms Baptista's explanation that stress or that it was 5.00am in Portugal would cause her not to recall such details. She was also unable to provide evidence about the frequency and duration of Mr Inocencio overseas travels, stating that she was not sure if he travelled overseas or within Australia and that his travel was not important to her. The Tribunal considers that if the parties were in a committed relationship Ms Baptista would have been able to provide consistent and detailed information about Mr Inocencio's travels.
60. Further to the above, Ms Baptista could not provide a satisfactory explanation as to why Mr Inocencio provided the name and contact details of his daughter Jessica on his outgoing passenger information cards rather than her contact details given they claimed to be married

and living together at the relevant times, stating only that she does not know why he would give his daughter's contact details as she is 18 years of age and has a disability. The Tribunal considers that the reason Mr Inocencio did not provide Ms Baptista's details on the passenger information forms is because they were not in a committed spousal relationship.

61. There is limited evidence before the Tribunal to indicate that the parties provide each other with companionship or emotional support or that they see the relationship as long term.

62. The Tribunal is not satisfied, for the reasons detailed above, that the parties are in a committed spousal relationship and, has formed the view that the parties entered into a relationship with one another to achieve a migration outcome for Ms Baptista and her children.

63. *Conclusion*

64. For the reasons above, the Tribunal is not satisfied that Ms Baptista and Mr Inocencio have a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal is not satisfied that the relationship between them is genuine and continuing and that they live together or do not live separately and apart on a permanent basis.

65. Given these findings the Tribunal is not satisfied that at the time of this decision the parties are in a spousal relationship. Therefore the applicant does not meet cl.801.221(2)(c).

66. Furthermore, the applicant has not claimed, and there is no evidence before the Tribunal, that the applicant meets the alternative criteria in cl.801.221 (2A), (3), (4), (5) or (6).

67. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

68. The secondary applicants were included in the application as members of the first named applicant's family. As Tribunal has found that the first name applicant does not satisfy the criteria for the visa, the secondary applicants cannot meet the secondary criteria for the visa and the Tribunal must also affirm the decision in relation to them.

69. As the Tribunal has found that the applicant does not meet a criterion for the grant of the visa, it did not consider it necessary to reassess the Department's findings in relation to PIC 4020.

DECISION

70. The Tribunal affirms the decision not to grant the applicants Partner (Residence) (Class BS) visas.

Rania Skaros
Member

ATTACHMENT - EXTRACT FROM MIGRATION REGULATIONS 1994

1.15A SPOUSE

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).